

Message Text

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ACTION L-03

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FM AMEMBASSY MANILA
TO SECSTATE WASHDC 349

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DEPT PASS TO USVA WASHDC

E.O. 11652: N/A
TAGS: ACLM, CPRS
SUBJECT: CIVIL SUIT AGAINST USVA PHILIPPINE NATIONAL
EMPLOYEE

1. LOCAL PHILIPPINE CITIZEN EMPLOYEE OF USVA IN MANILA HAS BEEN SERVED WITH A SUMMONS AND COMPLAINT IN A MATTER ARISING FROM HIS OFFICIAL DUTIES IN RELATION TO HIS POSITION AS AN INVESTIGATOR FOR THE VA.

2. COMPLAINANT ALLEGES THAT DEFENDANT MALICIOUSLY AND FALSELY REPORTED TO THE VA ERRONEOUS INFORMATION THAT PREVENTED THE COMPLAINANT FROM QUALIFYING FOR RESTITUTION OF VA BENEFITS UNDER PL 91-376. PLAINTIFF ASKS FOR 50,000 PESOS COMPENSATORY DAMAGES; 20,000 PESOS MORAL DAMAGES; 20,000 PESOS EXEMPLARY DAMAGES; REASONABLE ATTORNEYS FEE AND COSTS; AND WHATEVER FURTHER RELIEF AS MAY BE JUST AND EQUITABLE.

3. THIS CASE IS OF PARTICULAR IMPORTANCE TO VA AS DENIAL AND APPROVAL OF VARIOUS VA BENEFITS BASED ON CONFIDENTIAL REPORTS SUBMITTED BY ITS EMPLOYEE-INVESTIGATORS. UNABLE TO PROTECT INVESTIGATORS IN SUITS OF THIS NATURE WOULD
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CAUSE DIFFICULTY IN BEING ABLE TO OBTAIN FACTUAL INFORMATION ON WHICH TO BASE ADJUDICATION OF CLAIMS. IN PRESENT CASE, INVESTIGATOR DETERMINED THAT COMPLAINANT WAS STILL LIVING WITH COMMON-LAW HUSBAND; THEREFOR, RELATIONSHIP WAS NOT TERMINATED. VA UTILIZED REPORT TO DENY RESTITUTION OF VA SURVIVORS BENEFITS.

4. PHILIPPINE REPUBLIC ACT NO. 75 (R.A. 75) IN VERY BROAD AND ARCHAIC LANGUAGE PROVIDES FOR IMMUNITIES FOR LOCAL EMPLOYEES IN CERTAIN INSTANCES. QUOTE: SECTION IV: ANY WRIT OR PROCESS SUED OUT OR PROSECUTED BY AN PERSON IN ANY COURT OF THE REPUBLIC OF THE PHILIPPINES, OR BY ANY JUDGE OR JUSTICE, WHEREBY THE PERSON OF ANY AMBASSADOR OR PUBLIC MINISTER OF ANY FOREIGN STATE, AUTHORIZED AND RECEIVED AS SUCH BY THE PRESIDENT, OR ANY DOMESTIC OR DOMESTIC SERVANT OF ANY SUCH AMBASSADOR OR MINISTER IS ARRESTED OR IMPRISONED, OR HIS GOODS OR CHATTELS ARE DISTRAINED, SEIZED, OR ATTACHED, SHALL BE DEEMED VOID, AND EVERY PERSON BY WHOM THE SAME IS OBTAINED OR PROSECUTED, WHETHER AS PARTY OR AS ATTORNEY, AND EVERY OFFICER CONCERNED IN EXECUTING IT, SHALL, UPON CONVICTION, BE PUNISHED BY IMPRISONMENT FOR NOT MORE THAN THREE YEARS AND A FINE OF NOT EXCEEDING TWO HUNDRED PESOS IN THE DISCRETION OF THE COURT. END QUOTE.

HOWEVER, EMBASSY BELIEVES THAT TO ATTEMPT TO STRETCH WORDING TO COVER LOCAL EMPLOYEE OF USVA REGIONAL OFFICE BY ASSERTION OF IMMUNITY THROUGH DIPLOMATIC CHANNELS WOULD MEET WITH PUZZLEMENT FROM DFA AND WOULD BE HARD TO SUSTAIN UNDER THE CIRCUMSTANCES. ALSO, PAST EXPERIENCE HAS FOUND DFA NOT TOO HELPFUL IN CONTROVERSIAL AREAS OF IMMUNITY.

5. EMBASSY BELIEVES THAT CASE SHOULD BE DEFENDED BY UTILIZING LEGAL PROCEDURES AND DEFENSES AVAILABLE UNDER PHILIPPINE LAW INCLUDING JUDICIALLY ASSERTING R.A. 75, IF DEEMED APPROPRIATE, AND OFFICIAL ACTS DOCTRINE. EMBASSY LIMITED OFFICIAL USE

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HAS INSTRUCTED VA TO FILE MOTION TO DISMISS BY SPECIAL APPEARANCE IN ORDER TO PROTECT USG INTERESTS.

6. WHILE VA HAS IN-HOUSE COUNSEL, THE CHIEF LOCAL ATTORNEY DOES NOT HAVE A CURRENT LICENSE TO PRACTICE BEFORE PHILIPPINE COURTS AND MUST USE ATTORNEY FIELD INVESTIGATORS FOR THIS PURPOSE. EMBASSY BELIEVES CASE IS OF SUFFICIENT IMPORTANCE THAT VA SHOULD AUTHORIZE THE RETAINING OF QUALIFIED LOCAL PRIVATE COUNSEL. EMBASSY IS AWARE OF ATTORNEY GENERAL'S OPINION OF 17 SEPT 1968 WHICH STATED THAT THERE IS NO STATUTORY AUTHORITY FOR VA TO RETAIN PRIVATE COUNSEL TO DEFEND LOCAL PHILIPPINE EMPLOYEE. HOWEVER, EMBASSY WOULD SUGGEST THAT VA PERHAPS HAS CONTINGENCY FUND THAT COULD BE USED IN THIS REGARD AND WOULD STRONGLY RECOMMEND THIS OPTION BE EXPLORED.

7. ACTION REQUESTED: COMMENTS, IF ANY, ON EMBASSY POSITION REGARDING R.A. 75 AND AUTHORITY FOR VA REGIONAL OFFICE TO RETAIN PRIVATE COUNSEL TO REPRESENT LOCAL EMPLOYEE.

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